

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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PARAMITA BAGCHI,

Plaintiff,

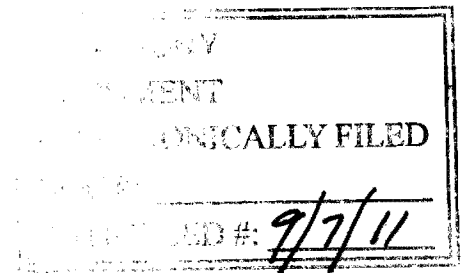
-against-

10 Civ. 4707 (LAK)

UNITED RECOVERY SYSTEMS, LP,

Defendant.
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ORDER



LEWIS A. KAPLAN, *District Judge*.

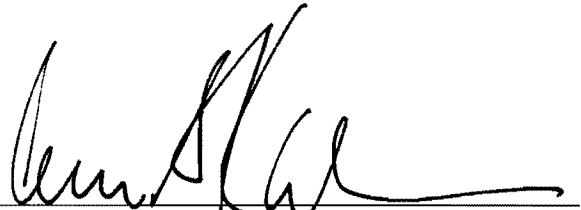
In a report and recommendation dated August 17, 2011 ("R&R"), Magistrate Judge George A. Yanthis recommended that I deny defendant's motion, pursuant to Fed. R. Civ. P. 12(b)(6), to dismiss the complaint. Defendant objects, essentially on the ground that it submitted evidence that it on one previous occasion involving a different debtor had added interest and fees to a consumer debt, thus in defendant's view disproving a key allegation of the complaint.¹ It acknowledges that the Magistrate Judge declined to consider this evidence in ruling on the Rule 12(b)(6) motion and contends that he should have considered it, thus converting the motion into one for summary judgment, and granted that motion.

There was no error in the Magistrate Judge's determination not to consider this evidence, which does not appear in the complaint, on a Rule 12(b)(6) motion. Nor is there any other error.

Accordingly, defendant's motion to dismiss the amended complaint [DI 13] is denied and its objection overruled.

SO ORDERED.

Dated: September 7, 2011



Lewis A. Kaplan
United States District Judge